

KELLY E. KONKRIGHT
#33544
LUKINS & ANNIS, P.S.
1600 Washington Trust Financial Center
717 W Sprague Ave.
Spokane, WA 99201-0466
Telephone: (509) 455-9555
Facsimile: (509) 747-2323

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

TRESHON NEDILL BROUGHTON,

Plaintiff,

v.

ALEX GORDON, individually and in his
official capacity, SHANE EMERSON,
individually and in his official capacity,
City of Pullman, a Washington
Municipality, the Pullman City Police
Department, and JOHN DOES 1-10,

Defendants.

NO. 2:18-cv-00340-SMJ

ANSWER TO COMPLAINT,
AFFIRMATIVE DEFENSES, AND
JURY DEMAND

ANSWER

Defendants Alex Gordon, Shane Emerson, the City of Pullman and the
Pullman City Police Department (“Defendants”), by and through their counsel of
record, hereby respond to the allegations of Plaintiff’s Complaint filed in the
above-captioned matter as follows:

ANSWER, AFFIRMATIVE DEFENSES, AND JURY
DEMAND 1

LAW OFFICES OF
LUKINS & ANNIS, PS
A PROFESSIONAL SERVICE CORPORATION
717 W Sprague Ave., Suite 1600
Spokane, WA 99201
Telephone: (509) 455-9555
Fax: (509) 747-2323

1 **PRELIMINARY STATEMENT**

2 1. Answering paragraph 1 of the Complaint, Defendants admit only that
3 plaintiff filed a purported civil rights action pursuant to 42 U.S.C. § 1983 against
4 defendants Alex Gordon and Shane Emerson, asserted purported federal civil
5 rights claims against defendant the City of Pullman and asserted numerous
6 purported state law claims. Any allegation not admitted is denied.
7

8 **JURISDICTION AND VENUE**

9 2. Answering paragraph 2 of the Complaint, Defendants admit only that
10 the United States District Court for the Eastern District of Washington has both
11 subject matter and personal jurisdiction over the action alleged in the Complaint.
12 Defendants further admit only that this Court has supplemental jurisdiction to hear
13 state law claims, but Defendants deny that they are liable under any state tort claim
14 theory alleged in the Complaint. Any allegation not admitted is denied.
15

16 3. Answering paragraph 3 of the Complaint, Defendants admit only that
17 venue is proper in the United States District Court for the Eastern District of
18 Washington and that all Defendants are residents of Washington. Any allegation
19 not admitted is denied.
20

21 **PARTIES**

22 4. Answering paragraph 4 of the Complaint, Defendants admit only that
23 Plaintiff is Treshon Broughton and he is a black male. Defendants do not have
24 sufficient information to admit or deny the remaining allegations therein, and
25 therefore deny the same.
26

ANWER, AFFIRMATIVE DEFENSES, AND JURY
DEMAND 2

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1 5. Answering paragraph 5 of the Complaint, Defendants admit only that
2 Defendant Alex Gordon was employed by the City of Pullman and the Pullman
3 City Police Department as a law enforcement officer and at all times relevant to the
4 allegations of the Complaint was acting within the course and scope of his
5 employment and was acting under the color of state law. Defendants further admit
6 only that at all times relevant to the allegations of the Complaint Defendant
7 Gordon has been a resident of Whitman County, State of Washington. Any
8 allegation not admitted is denied.
9

10 6. Answering paragraph 6 of the Complaint, Defendants admit only that
11 Defendant Shane Emerson was employed by the City of Pullman and the Pullman
12 City Police Department as a law enforcement officer and at all times relevant to the
13 allegations of the Complaint was acting within the course and scope of his
14 employment and was acting under the color of state law. Defendants further admit
15 only that at all times relevant to the allegations of the Complaint Defendant
16 Emerson has been a resident of Whitman County, State of Washington. Any
17 allegation not admitted is denied.
18

19 7. Answering paragraph 7 of the Complaint, Defendants admit only that
20 Defendant the City of Pullman is a governmental entity and a Washington
21 municipal corporation operating within this judicial district. Defendants further
22 admit only that Defendant the Pullman City Police Department is a department of
23 Defendant the City of Pullman and that Defendants the City of Pullman and the
24 Pullman Police Department employed Defendants Emerson and Gordon as law
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ANWER, AFFIRMATIVE DEFENSES, AND JURY
DEMAND 3

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1 enforcement officers. The remaining allegations of paragraph 7 are legal
2 conclusions to which an answer is not required. Any allegation not admitted is
3 denied.

4 8. Answering paragraph 8 of the Complaint, Defendants respond that the
5 allegations therein are legal conclusions to which an answer is not required. Any
6 allegation not admitted is denied.
7

8 **FACTUAL ALLEGATIONS**

9 9. Answering paragraph 9 of the Complaint, Defendants admit only that
10 on or about February 18, 2017, Plaintiff Broughton was present at a store named
11 Bob's Corner Market located in Pullman, Whitman County, Washington. Any
12 allegation not admitted is denied.
13

14 10. Answering paragraph 10 of the Complaint, Defendants admit only that
15 Defendant Gordon arrived at the store while Plaintiff Broughton was present inside
16 the store. Defendants further admit only that Defendants Gordon and Emerson
17 were in full uniform and carrying their service weapons during the time they were
18 inside the store on or about February 18, 2017. Any allegation not admitted is
19 denied.
20

21 11. Answering paragraph 11 of the Complaint, Defendants admit only that
22 before Defendants Gordon and Emerson arrived at the store, a 911 call was made
23 from the store and the caller stated words to the effect that, "Everything is good
24 now at Bob's Market" and then the call was disconnected. Defendants further
25 admit only that after the first 911 call was disconnected the 911 operator called
26

ANWER, AFFIRMATIVE DEFENSES, AND JURY
DEMAND 4

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1 back to the store and an unidentified male subject answered and stated that
2 someone tried to use a fake \$20 bill, and stated words to the effect that “they have
3 it figured out now.” Any allegation not admitted is denied.

4 12. Answering paragraph 12 of the Complaint, Defendants deny.

5 13. Answering paragraph 13 of the Complaint, Defendants admit only that
6 Defendant Emerson arrived at the store and made contact with Plaintiff Broughton
7 before Defendant Gordon arrived at the store and made contact with Plaintiff
8 Broughton. The remaining allegations therein are argumentative and as such an
9 answer is not required. Any allegation not admitted is denied.
10

11 14. Answering paragraph 14 of the Complaint, Defendants admit only that
12 Defendant Emerson first contacted Plaintiff Broughton while Plaintiff Broughton
13 was standing in front of the store’s check-out counter. Any allegation not admitted
14 is denied.
15

16 15. Answering paragraph 15 of the Complaint, Defendant Emerson
17 repeatedly asked Broughton to provide him with identification while standing at
18 the check-out counter. The remaining allegations therein are argumentative or
19 legal conclusions and as such an answer is not required. Any allegation not
20 admitted is denied.
21

22 16. Answering paragraph 16 of the Complaint, Defendants deny.

23 17. Answering paragraph 17 of the Complaint, Defendants admit only that
24 Plaintiff Broughton’s driver’s license fell to the floor of the store and was later
25 picked up by a Washington State University intern. The remaining allegations
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ANWER, AFFIRMATIVE DEFENSES, AND JURY
DEMAND 5

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1 therein are argumentative or legal conclusions and as such an answer is not
2 required. Any allegation not admitted is denied.

3 18. Answering paragraph 18 of the Complaint, Defendants admit only that
4 Defendant Gordon arrived at the store after Defendant Emerson's initial contact
5 with Plaintiff Broughton. The remaining allegations therein are argumentative or
6 legal conclusions and as such an answer is not required. Any allegation not
7 admitted is denied.
8

9 19. Answering paragraph 19 of the Complaint, Defendants admit only that
10 Defendants Gordon and Emerson took Plaintiff Broughton to the ground and that
11 Officer Emerson hammer fist the left side of Plaintiff's Broughton's face with
12 his right hand approximately two times not using full force. Any allegation not
13 admitted is denied.
14

15 20. Answering paragraph 20 of the Complaint, Defendants admit only that
16 Defendant Gordon used a Taser device on Plaintiff Broughton after first warning
17 him that he was going to do so and that the Taser's probes made contact with
18 Plaintiff Broughton's body. Any allegation not admitted is denied.
19

20 21. Answering paragraph 21 of the Complaint, the allegations therein are
21 argumentative or legal conclusions and as such an answer is not required. Any
22 allegation not admitted is denied.

23 22. Answering paragraph 22 of the Complaint, the allegations therein are
24 argumentative or legal conclusions and as such an answer is not required. Any
25 allegation not admitted is denied.
26

ANWER, AFFIRMATIVE DEFENSES, AND JURY
DEMAND 6

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1 23. Answering paragraph 23 of the Complaint, admit only that Plaintiff
2 Broughton was bleeding from two small points at which the Taser darts had
3 penetrated his skin. Any allegation not admitted is denied.

4 24. Answering paragraph 24 of the Complaint, admit only that Plaintiff
5 Broughton was handcuffed by Defendants Emerson and Gordon after Defendant
6 Gordon had deployed the Taser on Plaintiff Broughton. The remaining allegations
7 therein regarding Defendant Emerson's actions are argumentative or legal
8 conclusions and as such an answer is not required. Any allegation not admitted is
9 denied.
10

11 25. Answering paragraph 25 of the Complaint, Defendants deny.

12 26. Answering paragraph 26 of the Complaint, the allegations therein are
13 argumentative or legal conclusions and as such an answer is not required. Any
14 allegation not admitted is denied.
15

16 27. Answering paragraph 27 of the Complaint, the allegations therein are
17 argumentative or legal conclusions and as such an answer is not required. Any
18 allegation not admitted is denied.
19

20 28. Answering paragraph 28 of the Complaint, the allegations therein are
21 argumentative or legal conclusions and as such an answer is not required. Any
22 allegation not admitted is denied.

23 29. Answering paragraph 29 of the Complaint, the allegations therein are
24 argumentative or legal conclusions and as such an answer is not required. Any
25 allegation not admitted is denied.
26

ANWER, AFFIRMATIVE DEFENSES, AND JURY
DEMAND 7

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1 30. Answering paragraph 30 of the Complaint, the allegations therein are
2 argumentative or legal conclusions and as such an answer is not required. Any
3 allegation not admitted is denied.

4 31. Answering paragraph 31 of the Complaint, the allegations therein are
5 argumentative or legal conclusions and as such an answer is not required. Any
6 allegation not admitted is denied.

7 32. Answering paragraph 32 of the Complaint, Defendants admit only that
8 Defendants Gordon and Emerson initiated criminal charges against Plaintiff
9 Broughton by way of criminal citation that charged Plaintiff Broughton with
10 Obstructing Law Enforcement Officers and for Resisting Arrest in violation of
11 RCW 9A.76.020 and RCW 9A.76.040. The remaining allegations therein are
12 argumentative or legal conclusions and as such an answer is not required. Any
13 allegation not admitted is denied.

14 33. Answering paragraph 33 of the Complaint, the allegations therein are
15 argumentative or legal conclusions and as such an answer is not required. Any
16 allegation not admitted is denied.

17 34. Answering paragraph 34 of the Complaint, Defendants admit only that
18 Defendants Gordon and Emerson prepared police reports. The remaining
19 allegations therein are argumentative or legal conclusions and as such an answer is
20 not required. Any allegation not admitted is denied.

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ANWER, AFFIRMATIVE DEFENSES, AND JURY
DEMAND 8

LAW OFFICES OF
LUKINS & ANNIS, PS
A PROFESSIONAL SERVICE CORPORATION
717 W Sprague Ave., Suite 1600
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42. Answering paragraph 42 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

43. Answering paragraph 43 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

44. Answering paragraph 44 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

COUNT 2

42 U.S.C. 1983/State Law – False Arrest

45. Answering paragraph 45 of the Complaint, Defendants repeat and reallege their responses to paragraphs 1 through 44, inclusive, as if fully set forth herein.

46. Answering paragraph 46 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

47. Answering paragraph 47 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

ANSWER, AFFIRMATIVE DEFENSES, AND JURY
DEMAND 10

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A PROFESSIONAL SERVICE CORPORATION
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48. Answering paragraph 48 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

49. Answering paragraph 49 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

COUNT 3

42 U.S.C. 1983/State Law – Unreasonable/Excessive Use of Force

50. Answering paragraph 50 of the Complaint, Defendants repeat and reallege their responses to paragraphs 1 through 49, inclusive, as if fully set forth herein.

51. Answering paragraph 51 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

52. Answering paragraph 52 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

53. Answering paragraph 53 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

ANSWER, AFFIRMATIVE DEFENSES, AND JURY
DEMAND 11

LAW OFFICES OF
LUKINS & ANNIS, PS
A PROFESSIONAL SERVICE CORPORATION
717 W Sprague Ave., Suite 1600
Spokane, WA 99201
Telephone: (509) 455-9555
Fax: (509) 747-2373

COUNT 4

42 U.S.C. 1983 – Failure to Inform

54. Answering paragraph 54 of the Complaint, Defendants repeat and reallege their responses to paragraphs 1 through 53, inclusive, as if fully set forth herein.

55. Answering paragraph 55 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

56. Answering paragraph 56 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

COUNT 5

42 U.S.C. 1983 – Malicious Prosecution

57. Answering paragraph 57 of the Complaint, Defendants repeat and reallege their responses to paragraphs 1 through 56, inclusive, as if fully set forth herein.

58. Answering paragraph 58 of the Complaint, Defendants admit only that Defendants Gordon and Emerson initiated criminal charges against Plaintiff Broughton by way of criminal citation that charged Plaintiff Broughton with Obstructing Law Enforcement Officers and for Resisting Arrest in violation of RCW 9A.76.020 and RCW 9A.76.040. Any allegation not admitted is denied.

ANWER, AFFIRMATIVE DEFENSES, AND JURY
DEMAND 12

LAW OFFICES OF
LUKINS & ANNIS, PS
A PROFESSIONAL SERVICE CORPORATION
717 W Sprague Ave., Suite 1600
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59. Answering paragraph 59 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

60. Answering paragraph 60 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

61. Answering paragraph 61 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

62. Answering paragraph 62 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

COUNT 6
ASSAULT/BATTERY – STATE LAW CLAIM

63. Answering paragraph 63 of the Complaint, Defendants repeat and reallege their responses to paragraphs 1 through 62, inclusive, as if fully set forth herein.

64. Answering paragraph 64 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

ANSWER, AFFIRMATIVE DEFENSES, AND JURY
DEMAND 13

LAW OFFICES OF
LUKINS & ANNIS, PS
A PROFESSIONAL SERVICE CORPORATION
717 W Sprague Ave., Suite 1600
Spokane, WA 99201
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65. Answering paragraph 65 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

66. Answering paragraph 66 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

COUNT 7
INTENTIONAL AND/OR NEGLIGENT INFLICTION OF
EMOTIONAL DISTRESS – STATE LAW CLAIM

67. Answering paragraph 67 of the Complaint, Defendants repeat and reallege their responses to paragraphs 1 through 66, inclusive, as if fully set forth herein.

68. Answering paragraph 68 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

69. Answering paragraph 69 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

70. Answering paragraph 70 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

ANSWER, AFFIRMATIVE DEFENSES, AND JURY
DEMAND 14

LAW OFFICES OF
LUKINS & ANNIS, PS
A PROFESSIONAL SERVICE CORPORATION
717 W Sprague Ave., Suite 1600
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Telephone: (509) 455-9555
Fax: (509) 747-2373

COUNT 8
DEFAMATION – STATE LAW CLAIM

71. Answering paragraph 71 of the Complaint, Defendants repeat and reallege their responses to paragraphs 1 through 70, inclusive, as if fully set forth herein.

72. Answering paragraph 72 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

73. Answering paragraph 73 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

74. Answering paragraph 74 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

75. Answering paragraph 75 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

76. Answering paragraph 76 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required. Any allegation not admitted is denied.

ANWER, AFFIRMATIVE DEFENSES, AND JURY
DEMAND 15

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LUKINS & ANNIS, PS
A PROFESSIONAL SERVICE CORPORATION
717 W Sprague Ave., Suite 1600
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1 77. Answering paragraph 77 of the Complaint, the allegations therein are
2 argumentative or legal conclusions and as such an answer is not required. Any
3 allegation not admitted is denied.

4 78. Answering paragraph 78 of the Complaint, the allegations therein are
5 argumentative or legal conclusions and as such an answer is not required. Any
6 allegation not admitted is denied.

7 79. Answering paragraph 79 of the Complaint, the allegations therein are
8 argumentative or legal conclusions and as such an answer is not required. Any
9 allegation not admitted is denied.

10 80. Answering paragraph 80 of the Complaint, the allegations therein are
11 argumentative or legal conclusions and as such an answer is not required. Any
12 allegation not admitted is denied.

13 81. Answering paragraph 81 of the Complaint, the allegations therein are
14 argumentative or legal conclusions and as such an answer is not required. Any
15 allegation not admitted is denied.

16 **COUNT 9**
17 **FALSE LIGHT – STATE LAW CLAIM**

18 82. Answering paragraph 82 of the Complaint, Defendants repeat and
19 reallege their responses to paragraphs 1 through 81, inclusive, as if fully set forth
20 herein.
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ANWER, AFFIRMATIVE DEFENSES, AND JURY
DEMAND 16

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A PROFESSIONAL SERVICE CORPORATION
717 W Sprague Ave., Suite 1600
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1 83. Answering paragraph 83 of the Complaint, the allegations therein are
2 argumentative or legal conclusions and as such an answer is not required. Any
3 allegation not admitted is denied.

4 84. Answering paragraph 84 of the Complaint, the allegations therein are
5 argumentative or legal conclusions and as such an answer is not required. Any
6 allegation not admitted is denied.

7 85. Answering paragraph 85 of the Complaint, the allegations therein are
8 argumentative or legal conclusions and as such an answer is not required. Any
9 allegation not admitted is denied.

10 86. Answering paragraph 86 of the Complaint, the allegations therein are
11 argumentative or legal conclusions and as such an answer is not required. Any
12 allegation not admitted is denied.

13 87. Answering paragraph 87 of the Complaint, the allegations therein are
14 argumentative or legal conclusions and as such an answer is not required. Any
15 allegation not admitted is denied.

16 88. Answering paragraph 88 of the Complaint, the allegations therein are
17 argumentative or legal conclusions and as such an answer is not required. Any
18 allegation not admitted is denied.

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22 **ATTORNEY FEES**

23 89. Answering paragraph 89 of the Complaint, the allegations therein are
24 argumentative or legal conclusions and as such an answer is not required. Any
25 allegation not admitted is denied.

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ANWER, AFFIRMATIVE DEFENSES, AND JURY
DEMAND 17

LAW OFFICES OF
LUKINS & ANNIS, PS
A PROFESSIONAL SERVICE CORPORATION
717 W Sprague Ave., Suite 1600
Spokane, WA 99201
Telephone: (509) 455-9555
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JURY TRIAL

90. Answering paragraph 90 of the Complaint, the allegations therein are argumentative or legal conclusions and as such an answer is not required.

Answering the WHEREFORE clause prayer for relief that follows directly after paragraph 90 of Plaintiff's Complaint, Defendants deny that paragraph and its subparts 1 through 4, inclusive, and further deny that Plaintiff Broughton is entitled to any other award of damages or relief whatsoever.

AFFIRMATIVE DEFENSES

By way of further answer, Defendants allege the following affirmative defenses:

1. Failure to State a Claim: Plaintiff's complaint fails to state a claim upon which relief can be granted.

2. Intervening Act of Third Parties: If Plaintiff sustained injuries or damages as claimed, they were caused in whole or in part by the acts or omissions of others for whose intervening conduct or negligence Defendants are not responsible.

3. Foreseeability: Injury to Plaintiff was not foreseeable as a matter of law.

4. Superseding Cause: Any injury to Plaintiff was caused by the act of third persons, who by their intervention prevents Defendants from being liable for harm to Plaintiff.

ANWER, AFFIRMATIVE DEFENSES, AND JURY
DEMAND 18

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1 5. Qualified Immunity: Defendants Officer Gordon and Officer
2 Emerson are immune from any liability and protected against the burden of
3 litigation under the doctrine of qualified immunity and the common law
4 immunities protecting peace officers, prosecutors and public officials.

5 6. Unclean Hands: Plaintiff's claims are barred by the doctrine of
6 unclean hands.

7 7. Probable Cause: Defendants Emerson and Gordon had probable
8 cause to effectuate an arrest of Plaintiff.

9 8. Reasonable Suspicion: Defendants Emerson and Gordon had
10 sufficient reasonable suspicion of criminal activity by Plaintiff to detain him.

11 9. Arrest Under Legal Authority: Defendants Emerson's and Gordon's
12 conduct in effectuating the arrest of Plaintiff was under legal authority and
13 privileged.

14 10. Statute of Limitations: Plaintiff's claims, and each of them, are
15 barred by the applicable statutes of limitations.

16 11. Conduct Not Extreme or Outrageous: Any and all claims by Plaintiff
17 based in whole or in part upon any alleged physical or emotional injury or mental
18 distress are barred because no conduct of Defendants was extreme or outrageous or
19 undertaken with the intent of causing, or in reckless disregard of the probability of
20 causing, emotional distress.

21 12. Failure to Mitigate: The Complaint, and each and every
22 purported claim alleged therein, is barred in whole or in part because Plaintiff has
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ANWER, AFFIRMATIVE DEFENSES, AND JURY
DEMAND 19

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1 failed to mitigate or reasonably attempt to mitigate his damages, if any, as required
2 by law.

3 13. Absence of Malice, Reckless Indifference or Fraud Precludes Punitive
4 Damages: Defendants allege that they have not acted with malice, reckless
5 indifference or fraud towards Plaintiff and, therefore, Defendants cannot be liable
6 for punitive damages.
7

8 14. Failure to Plead Facts Sufficient to Support Punitive Damages:
9 Plaintiff is not entitled to receive punitive damages because Plaintiff has not
10 pleaded facts sufficient to support such an award.

11 15. Lack of Capacity to be Sued: Defendant Pullman City Police
12 Department is a department of the City of Pullman and lacks the capacity to be
13 sued as a separate entity.
14

15 16. Comparative Negligence: If Defendants were negligent in any respect,
16 which Defendants expressly deny, then any such negligence on the part of
17 Defendants was less than that of Plaintiff and Plaintiff's recovery should therefore
18 be diminished or barred.
19

20 17. Estoppel: By reason of Plaintiff's own acts and omissions, Plaintiff
21 is estopped from seeking any recovery from Defendants by reason of the
22 allegations set forth in the Complaint.

23 18. Justified Use of Force: The Complaint and each cause of action
24 therein is barred because the use of force against the Plaintiff by Defendants and
25 the employees of the City, if any, was privileged and justified.
26

ANWER, AFFIRMATIVE DEFENSES, AND JURY
DEMAND 20

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1 19. No Monell Liability: The Complaint fails to state a federal civil
2 rights claim against the Defendants under the doctrine announced in *Monell v.*
3 *Department of Social Services*, 436 U.S. 658 (1978).

4 20. Denial of Damages: Defendants deny that Plaintiff has been
5 damaged in any sum or sums, or otherwise, or at all, by reason or any act or
6 omission by Defendants.

7 21. No Respondeat Superior Liability: Defendants City of Pullman
8 and the Pullman Police Department allege that they are not liable for any acts or
9 omissions of its employees which occurred outside of those employees's scope of
10 employment with the City.

11 22. Failure to Comply with Tort Claims Act: Defendants allege that
12 the Plaintiff failed to comply with all conditions precedent required under the state
13 tort claims act for the state law claims alleged in his Complaint, including but not
14 limited to failing to timely file the requisite notice of tort claim and therefore all
15 such claims of Plaintiff are barred.

16 23. Good Faith Immunity: Defendants were acting without malice in
17 good faith at all relevant times and therefore enjoy good faith immunity from suit.

18 24. Pullman City Police Department Is Not a "Person": Defendants
19 allege that Pullman City Police Department is not liable under 42 U.S.C. § 1983
20 because it is not a "person" within the meaning of that statute.

21 25. Assumption of the Risk: Plaintiff had full knowledge of the risk
22 involved in the activity in which Plaintiff was engaged at the time of the incident
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ANWER, AFFIRMATIVE DEFENSES, AND JURY
DEMAND 21

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1 set forth in the Complaint, and voluntarily assumed all risks incident to the activity
2 engaged in at the time and place mentioned in the Complaint, and the loss or
3 damage, if any, sustained by Plaintiff was caused by those risks assumed.

4 26. Waiver: By conduct, representations and omissions, Plaintiff has
5 waived any claim for relief against Defendants.

6 27. Laches: Plaintiff has unnecessarily delayed in protecting the right
7 or rights asserted and has unreasonably delayed in bringing this action, and is
8 consequently not entitled to the relief sought.

9 28. Reckless and Wanton: At all times mentioned in the Complaint,
10 Plaintiff acted in a careless, reckless, wanton and negligent manner in and about
11 the matter set forth in the Complaint; that such conduct proximately contributed to
12 the injuries and damages, if any, sustained or claimed by Plaintiff and that as a
13 consequence Plaintiff's claims are barred.

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17 WHEREFORE, having fully answered Plaintiff's Complaint, Defendants
18 pray as follows:

- 19 1. That the Court dismiss Plaintiff's Complaint;
20 2. That the Court enter judgment in favor of Defendants;
21 3. That Defendants recover their attorney's fees, costs, disbursements
22 incurred herein, and
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ANWER, AFFIRMATIVE DEFENSES, AND JURY
DEMAND 22

LAW OFFICES OF
LUKINS & ANNIS, PS
A PROFESSIONAL SERVICE CORPORATION
717 W Sprague Ave., Suite 1600
Spokane, WA 99201
Telephone: (509) 455-9555
Fax: (509) 747-2323

1 4. That Defendants be granted such other and further relief as the Court
2 deems just and equitable.

3 DATED this 7th day of March, 2019.

4
5 LUKINS & ANNIS, P.S.

6
7 By /s/Kelly E. Konkright
8 KELLY E. KONKRIGHT
9 #33544
10 Attorneys for Defendants Shane
11 Emerson, Alex Gordon, Pullman
12 Police Department and
13 City of Pullman
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ANWER, AFFIRMATIVE DEFENSES, AND JURY
DEMAND 23

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